



- 2.6.1 Administrative changes (corrections to typographical and grammatical errors and corrections to property addresses).
- 2.6.2 Updates to individual Citations.
- 2.6.3 Changes to proposed heritage gradings of individual properties.
- 2.6.4 Sites included in the Review have been removed.
- 2.7 This report recommends that Council endorse the Review and commences a planning scheme amendment (known as Amendment C206port) to implement the recommendations. The Amendment would follow the statutory process set out by the *Planning and Environment Act 1987* and take approximately 18 months.
- 2.8 This report also recommends that Council makes a formal request to the Minister for Planning to apply interim heritage controls (through separate Amendment C209port) to properties not already included in the heritage overlay (as outlined in **Attachment 7**). This would provide protection on an interim basis to those properties while Amendment C206port is progressed.
- 2.9 Resources have been allocated in the 2022/23 Planning Scheme Amendments Program budget to progress this project.

3. RECOMMENDATION

That Council:

- 3.1 Endorses the two consultant reports (**Attachments 2 and 3**) as the strategic basis for additional and modified heritage controls proposed by Amendments C206port and C209port.
- 3.2 Authorises the Chief Executive Officer (or delegate) to:
 - 3.2.1 Seek authorisation from the Minister for Planning to prepare and exhibit Amendment C206port as shown in **Attachment 6** to this report, pursuant to Sections 8A of the *Planning and Environment Act 1987* (the Act).
 - 3.2.2 Place Amendment C206port to the Port Phillip Planning Scheme on exhibition, in accordance with Section 19 of the Act, subject to Ministerial Authorisation.
 - 3.2.3 Request the Minister for Planning to prepare and approve Amendment C209port to the Port Phillip Planning Scheme pursuant to Section 20(4) of the Act to apply interim heritage controls to the properties identified in **Attachment 7**.
 - 3.2.4 Write to the Minister for Planning and request that Amendment C189port be withdrawn, as the interim heritage control request for 12 Hotham Grove, Ripponlea will be included in Amendment C209port.
 - 3.2.5 Finalise the documentation and Ministerial requests for Amendment C206port and C209port, including making minor changes that do not change its intent.



4. KEY POINTS/ISSUES

Background

- 4.1 Council's heritage program takes an area-based approach to remove gaps in the heritage overlay and ensure heritage controls and documentation are robust and up-to-date.
- 4.2 The area for this Review is the HO7 precinct (Elwood, St Kilda, Balaclava and Ripponlea) and its immediate surrounds, including parts of St Kilda East (see **Attachment 1**). HO7 has not been holistically reviewed since its introduction to the Port Phillip Planning Scheme in 2001.
- 4.3 The existing HO7 precinct includes buildings from a wide range of periods, from the Victorian era to the late 20th century as well as different building types such as cottages, villas and flats. The Precinct includes the St Kilda Botanical Gardens, Brighton Road, the Brighton beach railway and the public buildings precinct on the corner of Brighton Road and Carlisle Street. The current Statement of Significance describes the importance of the area in informing observers about past lifestyles and living standards.
- 4.4 Council commissioned RBA Architects and Conservation Consultants to undertake an assessment and review of HO7, including to:
 - 4.4.1 Provide appropriate strategic justification for any changes to the boundaries of HO7, including the potential to divide the precinct into smaller precincts, and review the existing boundaries of proximate precincts such as HO439 (Nightingale Street Precinct, Balaclava).
 - 4.4.2 Ensure the citation and Statement of Significance in the Port Phillip Heritage Review (PPHR) adequately describes the significance of any existing or new heritage places in the study area.
 - 4.4.3 Assess individual places for potential heritage significance including two hotels within the study area identified for potential social significance (Dick Whittington and Inkerman Hotel).
 - 4.4.4 Update and apply new heritage gradings to existing and new places in the Heritage overlay.
 - 4.4.5 Support the conservation and management of the HO7 precinct and broader study area into the future by ensuring all relevant heritage controls and documentation are up to date.
- 4.5 To supplement the work undertaken by RBA a review of citations for existing heritage precincts and individual places within the study area was completed by Council's Heritage Advisor and heritage consultant Peter Barrett Pty Ltd. This will ensure all citations for precincts and places in the study area have an updated Statement of Significance in the required format.

Recommendations of the Review

- 4.6 The Review is complete and comprises the following reports:



- 4.6.1 *HO7 Elwood St Kilda Balaclava Ripponlea Precinct heritage review Stage 2, 2022* (RBA Architects and Conservation Consultants, 2022) **(Attachment 2)**
- 4.6.2 *HO7 Precinct: Citations Update Report* (Peter Andrew Barrett and David Helms, 2022) **(Attachment 3)**.
- 4.7 The Review recommends changes to the application of the Heritage Overlay and associated documentation for places in the study area, as summarised below:
- 4.7.1 Break up the HO7 precinct into 8 smaller, more cohesive precincts each with a distinct history, character and significance. This includes changes proposed to the boundaries to add some new places and remove some places from the Heritage Overlay. The new precincts comprise:
- Two commercial precincts (the Ripponlea Commercial Precinct and the Village Belle Commercial Precinct).
 - The Carlisle Street Commercial and Public Precinct.
 - Five residential/mixed use precincts (the Ripponlea Residential Precinct, the Westbury Close Precinct, the St Kilda Botanical Gardens & Environs Precinct the Brunnings Estate and Environs Precinct and the Balaclava Flats Residential Precinct). HO439 – Nightingale Street Precinct is incorporated into the Balaclava Flats Residential Precinct.
- 4.7.2 Create two new precincts - the Balston Street Precinct and the Inkerman Street Commercial Precinct.
- 4.7.3 Apply heritage overlays to 19 new individual places and create six new group listing heritage overlays.
- 4.7.4 Update three existing precinct citations (HO315, HO316 and HO317), including extension of the precinct boundary of HO316.
- 4.7.5 In total:
- Approximately 300 places should be added to the Heritage Overlay through inclusion in the proposed heritage precincts.
 - 19 new places are determined to meet the threshold for local significance and are recommended for inclusion in individual heritage overlays.
 - 6 new group listings are determined to meet the threshold for local significance and are recommended for inclusion in heritage overlays.
 - 42 properties are recommended for removal from the Heritage Overlay.
 - Three precinct citations should be updated (HO315, HO316 and HO317), including extension of the precinct boundary of HO316.
 - 89 existing individual citations in the PPHR should be updated.



- Revision of a number of heritage gradings for properties in precincts.

Changes to heritage grading definitions

- 4.8 Places within a Heritage Overlay precinct are graded as 'Significant', 'Contributory' or 'Non-Contributory'. Places with an individual Heritage Overlay are all graded 'Significant'. Heritage gradings are defined in local policy at 22.04 of the Port Phillip Planning Scheme and are shown on the *Heritage Policy Map* incorporated document.
- 4.9 Officers have looked to clarify the distinction between 'Significant' and 'Contributory' places within heritage precincts as this has caused confusion for landowners and other planning scheme users.
- 4.10 Revised definitions have been prepared (**Attachment 5**) and have been applied through the Review. The key difference is the definition of a 'Significant' heritage place so that only places of individual local or State significance will have this grading. 'Significant' places will be specifically referenced in a heritage citation. 'Contributory' graded places contribute to the heritage character of the precinct but are not of standalone significance. In the future, most precincts will comprise a majority of 'Contributory' places.
- 4.11 While current heritage policy at clause 22.04 distinguishes between 'Significant' and 'Contributory' buildings in relation to whether demolition may be supported, the revised heritage policy proposed in Amendment C203port (Planning Scheme Review) contains the same broad heritage objectives and requirements for 'Significant' and 'Contributory' places.
- 4.12 The definitions are proposed to be updated in the Port Phillip Planning Scheme as part of the planning scheme amendment to implement the Review and will apply only to the new and updated precincts assessed in the HO7 Review. Current definitions will continue to apply to existing places in the heritage overlay and will be updated in future heritage reviews.

Summary of community feedback and changes to recommendations of the Review

- 4.13 The consultation process is outlined in Section 4 of this paper.
- 4.14 94 submissions were received. Of these, 5 were entirely supportive of the Review, 33 supported recommendations for specific sites and 56 submissions raised issues with the Review generally in relation to specific sites. Verbal feedback at the drop-in-sessions was predominately supportive of strengthening heritage controls.
- 4.15 A detailed summary of the issues raised in submissions and officer's response including changes made to the Review is outlined in **Attachment 4**.
- 4.16 As a result of the consultation process, the following refinements were made to the Review reports:



- 4.16.1 Removing 1 Penny Lane, Balaclava from the proposed HO (Westbury Close Precinct) as it is located to the rear of a property on the precinct boundary and has no heritage value.
- 4.16.2 Removing 58 Carlisle Street from the proposed HO (St Kilda Botanical Gardens and Environs Precinct) as it has been demolished.
- 4.16.3 Refining the boundary of the proposed HO (Balaclava Flats Residential Precinct) to 12 Martin Street, St Kilda so that it excludes the non-contributory garden section of the property.
- 4.16.4 Refining the boundary of the proposed HO to 33 and 35 Tennyson Street, Elwood to only include those parts of the properties (front building at 33 Tennyson Street and adjacent land at 35 Tennyson Street with street frontage) that could impact the heritage streetscape.
- 4.16.5 Applying tree controls to 12-14 Duke Street, St Kilda in lieu of 18 Duke Street to reflect the location of significant trees on the land.
- 4.16.6 Changes to the proposed heritage grading's for the following properties:
- 5 Irymple Street from 'Contributory' to 'Non-Contributory' due to the extent of modifications and removal of original heritage fabric from the dwelling.
 - 43 Tennyson Street from 'Contributory' to 'Non-Contributory' due to the extent of alterations.
 - 31 Erindale Avenue from 'Contributory' to 'Non-Contributory' due to the extent of alterations.
- 4.16.7 Changes to the following Citations:
- Update the St Kilda Botanical Gardens and Environs Precinct citation to reflect the correct location of significant trees to be protected at 12-14 Duke Street rather than 18 Duke Street.
 - Update the Citation for the Balston Street Precinct to remove reference to the brickwork fence at 15 Balston Street as it is not original.
 - Update individual Citation 2420 to incorporate additional information for 101A Hotham Street, Balaclava provided by the submitter.
 - Update individual Citation 2446 (Duke of Edinburgh Hotel – former) to include historical permit information.
 - Update group listing Citation 2331 to note the removal of a chimney at 12 Hotham Grove, Ripponlea.
- 4.17 In addition to the changes proposed in response to submissions, a number of administrative corrections were made to the Review such as corrections to property addresses, and corrections to general formatting, spelling and grammar.



Proposed Planning Scheme Amendment (Amendment C206port)

- 4.18 A planning scheme amendment is required to make changes to the Port Phillip Planning Scheme to give statutory effect to the recommendations of the Review.
- 4.19 Amendment C206port proposes changes to the application of the Heritage Overlay through changes to the schedule of the Heritage Overlay (Schedule to Clause 43.01) and planning scheme maps, and changes to associated heritage documentation including the Port Phillip Heritage Review Incorporated Document (including the Heritage Policy Map and Neighbourhood Character Map) in accordance with the recommendations of the Review.
- 4.20 The amendment documentation including the Explanatory Report which details the specific planning scheme changes is included as **Attachment 6**.
- 4.21 If Council proceeds with the amendment, it will follow the statutory process outlined in the Planning and Environment Act 1987 which includes the following steps over typically an 18-month period:
- 4.21.1 Authorisation to commence amendment process from Minister for Planning.
 - 4.21.2 Public Exhibition including statutory notification to all affected owners and occupiers and the opportunity for submissions to be made to Council.
 - 4.21.3 Review of submissions by Council and referral to independent Planning Panel if there are unresolved issues.
 - 4.21.4 Panel process providing opportunity for further independent review.
 - 4.21.5 Council consideration of panel outcome and adoption of amendment.
 - 4.21.6 Final approval of amendment by Minister for Planning.

Interim Heritage Controls (Proposed Amendment C209port)

- 4.22 Interim heritage controls can protect places of significance whilst permanent controls are being considered through the planning scheme amendment process. This protects a building not currently included in the Heritage Overlay pending the completion of the planning scheme amendment process. An interim control does not prevent demolition outright, but rather triggers a requirement for a planning permit for demolition or works that change the appearance of the place to ensure heritage matters are considered.
- 4.23 Council is required to make a request to the Minister for Planning to exercise their powers pursuant to section 20(4) of the *Planning and Environment Act 1987* to apply an interim heritage control, based on an assessment that the places are of local heritage significance. *Practice Note 29 'Ministerial Powers of Intervention'* identifies circumstances when the Minister may undertake a section 20(4) amendment. This includes that:

“The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).”



- 4.24 Amendment C209port to the Port Phillip Planning Scheme proposes to apply interim heritage controls to places not already covered by a Heritage Overlay that are proposed to be included as 'Significant' or 'Contributory' heritage places, in accordance with the recommendations of the HO7 Review. **Attachment 7** includes a list of properties proposed for interim heritage controls via Amendment C209port, with details of the associated Heritage Overlay name and number, heritage grading and Citation that would apply to each property through the interim control.
- 4.25 Officers have completed a planning / building permit check of properties in the HO7 Review area to identify any properties recommended for the heritage overlay that have an approval (planning and/or building permit and section 29a demolition consent) involving demolition. To ensure procedural fairness to those landowners, **Attachment 8** includes a list of affected properties along with a recommendation on whether it has been included in the request for permanent or interim heritage controls.

12 Hotham Grove, Ripponlea

- 4.26 A request to demolish the house at 12 Hotham Grove, Ripponlea under Section 29a of the Building Act was received by Council on 12 July 2022.
- 4.27 The HO7 Review recommends 12 Hotham Grove be included in the Heritage Overlay as part of a group listing that includes a similar property at 2 Hotham Grove, Ripponlea, as one of several surviving late Victorian timber houses in an isolated pocket of Ripponlea. The draft Citation provides that:
- The houses at 2 and 12 Hotham Grove, Ripponlea are of local historical and representative significance to the City of Port Phillip.*
- 4.28 Under delegation, the Chief Executive Officer made a request to approve an interim Heritage Overlay (via Amendment C189port) to the Minister for Planning on 1 August 2022. Consequently, Council officers were able to put a stay on the demolition request.
- 4.29 To date, a decision by the Minister for Planning has not been made on Amendment C189port (12 Hotham Grove, Ripponlea). Officers propose that Council withdraw Amendment C189port, and include 12 Hotham Grove, Ripponlea within Amendment C209port so there is a single request before the Minister applying to interim controls within the HO7 Review area.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Public consultation on the Review occurred for three weeks from 25 May to 15 June 2022 and involved:
- 5.1.1 Approximately 6,500 tailored letters sent to owners and occupiers of affected properties, and key community groups.
 - 5.1.2 Two drop-in sessions for interested parties (approximately 80 attendees).
 - 5.1.3 Have Your Say project webpage with HO7 Review documentation and Frequently Asked Questions. There were 1,089 visits to this page during the consultation period.



- 5.1.4 Availability of HO7 Review documentation at the St Kilda Town Hall and St Kilda library.
 - 5.1.5 An invitation for written submissions relating to the Review.
 - 5.1.6 Responding to approximately 100 property specific enquiries received via email to Council's heritage inbox as well as telephone calls (from ASSIST).
 - 5.2 94 submissions were received. Of these, 5 are entirely supportive of the Review, 33 support the recommendations for specific sites, and 56 submissions raised issues with the Review generally in relation to specific sites.
 - 5.3 Verbal feedback at the drop-in sessions was predominantly supportive of strengthening heritage controls. A summary of detailed submissions, including officer responses, is included at **Attachment 4**.
 - 5.4 All submitters to the HO7 Review and interested persons have been invited to attend this Council Meeting.
 - 5.5 All owners of properties to be affected by proposed Amendment C209port (Interim heritage controls) have been advised of the proposal to introduce interim heritage controls and invited to attend this Council meeting.
 - 5.6 Amendment C206port (permanent heritage controls) would undergo a public exhibition process in accordance with the requirements of the Act. This provides an opportunity for interested persons / groups to make a submission on the proposed amendment.
 - 5.7 All submissions made on the amendment are required to be reported to Council for consideration. Objecting submissions that cannot be resolved are required to be referred to an independent Planning Panel (appointed by the Minister for Planning).
- 6. LEGAL AND RISK IMPLICATIONS**
- 6.1 Allowing for consultation of the Review has given the community the opportunity to provide input to the process and is best practice for Council to consult with affected and interested parties prior to the formal Amendment phase.
 - 6.2 The request for interim planning controls is proposed to manage the 'risk' of building demolition prior to permanent heritage controls being introduced. Land owners will have the opportunity to make submissions in relation to the proposed heritage controls, through the full exhibition of Amendment C206port (permanent controls).
- 7. FINANCIAL IMPACT**
- 7.1 Should Council endorse a full amendment process through Amendment C206port, costs will include the payment of statutory fees, notification during public exhibition, and an independent Planning Panel hearing (including Panel costs, legal fees and expert evidence), should there be any objecting submitters to the amendment.



7.2 Council will be required to pay a statutory fee of \$4,128.30 to request the Minister to prepare and approve the interim heritage controls through Amendment C209port.

7.3 Provision for these costs is made in the annual Planning Scheme Amendments Program budget.

8. ENVIRONMENTAL IMPACT

8.1 The amendments will have a positive environmental impact by protecting places of historic significance.

8.2 The Victorian heritage strategy, Victoria's Heritage: Strengthening our Community (DSE, 2006) details the environmental benefits of conservation in Chapter 2, specifically (at p21):

'Heritage policies and programs can help achieve the broader goals of sustainability. It recognises the embodied energy and life-cycle value of traditional materials, and reduces the waste associated with demolition and new buildings'.

9. COMMUNITY IMPACT

9.1 The amendments will have a positive community effect through the preservation of historically significant places in the East St Kilda, St Kilda, Balaclava, Elwood and Ripponlea areas, for the benefit of current and future generations.

9.2 The amendments will not have a significant economic effect on the wider community. Including new properties into the Heritage Overlay may impose additional costs on the owners or developers of the properties through increased planning permit requirements. The economic effects of requiring a planning permit may be reduced through the availability of Port Phillip's heritage, urban design and planning officers' pre-application advice prior to the lodgement of a planning permit application.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Implementation of the HO7 Review and the changes to heritage controls as proposed in Amendment C206port and Amendment C209port to the Port Phillip Planning Scheme, supports delivery of the following strategic direction in the Council Plan (2021-31):

- *Liveable: A City that is a great place to live, where our community has access to high quality public spaces, development and growth are well-managed, and it is safer and easy to connect and travel within.*

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 If Council proceeds with Amendment C206port, a request for Ministerial authorisation to exhibit will be made.

11.1.2 If Council requests interim heritage control through Amendment C209port, this request will also be made.



- 11.1.3 The Minister has 10 business days to make a decision on the request for authorisation, or the amendment is deemed to be authorised.
- 11.1.4 Subject to the timing of authorisation, exhibition of Amendment C206port is scheduled for one month in December 2022. This could be extended if it falls over the holiday period to allow sufficient time for submissions.
- 11.1.5 All submissions received are required to be considered by Council and any unresolved submissions must be referred to an independent Planning Panel. A Panel would be anticipated in June 2023 (assuming exhibition commenced in December 2022).

11.2 COMMUNICATION

- 11.2.1 All submitters and interested parties will be notified of Council's decision at this meeting.
- 11.2.2 Information on Council's decision at this meeting will also be made available on the Have Your Say HO7 Review project page.
- 11.2.3 A Council decision to proceed with Amendment C206port will result in formal public exhibition as outlined in Section 5 of this report. This will ensure awareness of the amendment by affected property owners and occupiers, key interest groups and the wider community.

12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

- ATTACHMENTS**
- 1. Map showing Study Area and key recommendations**
 - 2a. HO7 Review stage 2 RBA Report and Appendix F**
 - 2b. HO7 Review Stage 2 RBA Report Appendices G and H**
 - 3. HO7 Review Citations**
 - 4. HO7 Review - Summary of submissions**
 - 5. Existing and Proposed Heritage Grading Definitions**
 - 6a. C206port Amedment supporting documents Part 1**
 - 6b. C206port Amedment supporting documents Part 2**
 - 6c. C206port Amedment supporting documents Part 3**
 - 7. List of places to be included in Interim HO (AmC209port)**
 - 8. Properties to be excluded from amendment**

(provided separately due to size)